

APPEAL NO. 022758
DECEMBER 16, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 25, 2002. With respect to the sole issue before him, the hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the first quarter. The appellant (carrier) appealed, contending that the evidence was insufficient to establish that the claimant was enrolled in a full-time program with the Texas Rehabilitation Commission (TRC). There was no response from the claimant.

DECISION

Reversed and rendered.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) by complying with Rule 130.102(d)(2). The parties stipulated that the claimant had an impairment rating greater than 15%; that he did not commute any portion of his impairment income benefits; that he never earned wages for at least 90 days that were at least 80% of his average weekly wage; that the qualifying period for the first quarter ran from March 14 to June 12, 2002; and that the first quarter of SIBs ran from June 26 to September 24, 2002¹.

The good faith job search requirements of Section 408.142(a) and Rule 130.102(b)(2) may be met by meeting the requirements of Rule 130.102(d)(2). The requirements of Rule 130.102(d)(2) are met when the claimant "has been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program sponsored by the [TRC] during the qualifying period." The claimant testified that he had some ability to work during the qualifying period after his doctor released him to restricted duty on May 8, 2002. The claimant testified that the only job search he made was with the employer. The claimant further testified that he met with a counselor from the TRC on three occasions, and participated in a psychological evaluation there. According to his testimony, the claimant made a plan with the TRC counselor to go to college, in which he enrolled in after the qualifying period and which he is currently enrolled. The claimant introduced no documentary evidence that he was enrolled in a full-time vocational program sponsored by the TRC. There was also no evidence of an individualized plan for employment or the other requirements for a full-time vocational rehabilitation program (VRP) as set out in Rule 130.101(8), nor were the results of the alleged psychological testing in evidence. In addition, when asked by the hearing

¹ The parties do not dispute, and the hearing officer found, that the claimant sustained a compensable injury to his cervical spine on _____.

officer if all of the claimant's meetings with the TRC counselor were within the qualifying period, the claimant said "I believe they were, but I don't remember."

The carrier argued that although the claimant testified that he had some contact with the TRC, it was not enough, even if true, to constitute being enrolled in, and satisfactorily participated in, a full-time VRP sponsored by the TRC, as required by the rule. We agree. There was no evidence regarding the alleged full-time TRC program nor was there evidence of a VRP as set out in Rule 130.101(8). In the absence of such evidence, we hold that the hearing officer's determination that the claimant was enrolled in and satisfactorily participating in a full-time VRP sponsored by the TRC during the qualifying period to be unsupported by the evidence. Although the hearing officer makes a number of other findings, it does not appear that any of the other means of proving a good faith effort to obtain employment commensurate with the claimant's ability to work as found in Rule 130.102, subsections (d)(1), (2), (3), (4), or (5) and Rule 130.102(e) were met.

The hearing officer erred in determining that the claimant was entitled to first quarter SIBs; therefore, we reverse that decision and render a new decision that the claimant was not entitled to SIBs for the first quarter because he did not meet the good faith requirements of Rule 130.102(b)(2).

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge